

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

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MAXIMO CASTRO,	:	
	:	Civil No. 18-11833 (FLW)
Petitioner,	:	
	:	
v.	:	MEMORANDUM AND ORDER
	:	
UNITED STATES OF AMERICA,	:	
	:	
Respondent.	:	
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Petitioner *pro se*, Maximo Castro (“Petitioner”), a federal prisoner presently incarcerated at United States Penitentiary Canaan, in Waymart, Pennsylvania, filed a motion to vacate, set aside, or correct a sentence, pursuant to 28 U.S.C. § 2255. (*See* ECF No. 1.) The Court notes, however, that the form motion filed by Petitioner lacks the required notice under *United States v. Miller*, 197 F.3d 644 (3d Cir. 1999). Because federal law generally requires a District Court to dismiss a second or successive § 2255 motion, 28 U.S.C. §§ 2244(a), 2255(h), a § 2255 movant must include in his or her first § 2255 motion all available federal claims. *See Miller*, 197 F.3d at 649; Rules Governing § 2255 Cases, Rule 2(b)(1), 28 U.S.C.A. foll. § 2255. Consequently, the Court will now provide the *Miller* notice to Petitioner. Before a District Court may rule on a § 2255 motion from a *pro se* petitioner, it must notify the petitioner that he may either (1) have his pending motion considered as his all-inclusive § 2255 motion and ruled on as filed, or (2) withdraw the motion and file an amended timely § 2255 motion that includes all available federal claims. *Miller*, 197 F.3d at 652.

Therefore, within 45 days, Petitioner shall notify the Court as to whether he (1) wishes to have his motion ruled on as filed or (2) wishes to withdraw his motion and submit one all-

inclusive § 2255 motion. If Petitioner wishes to submit an amended motion, he shall do so within 45 days of the entry of this Memorandum and Order.¹

Accordingly, IT IS, on this 30th day of January 2019,

ORDERED that Petitioner shall notify the Court within 45 days of the entry of this Memorandum and Order whether he wishes to have his motion ruled on as filed or whether he wishes to withdraw his motion and submit one all-inclusive § 2255 motion that includes all available federal claims; and it is further

ORDERED that to the extent Petitioner wishes to withdraw his original motion and submit one all-inclusive amended motion, he must submit the amended motion within 45 days of the entry of this Court's Order; and it is further

ORDERED that, if Petitioner fails to submit for filing an amended § 2255 motion within 45 days of the date of the entry of this Order, then this Court will consider Docket Entry Number 1 as Petitioner's one and only all-inclusive § 2255 motion; and it is further

ORDERED that the Clerk of the Court shall serve a copy of this order on Petitioner by regular U.S. mail, accompanied by a blank Motion to Vacate, Set Aside, or Correct a Sentence by a Person in Federal Custody, Form AO 243 (modified): DNJ-Habeas-004(Rev.01-2014); and it is further

¹ The Court notes that Petitioner, in a cover letter accompanying his motion, requested that I recuse myself from hearing this proceeding "because of a conflict of interest as stated in the Prima Facie Showing." (ECF No. 1-1, at 1.) Petitioner's request that I recuse myself from hearing this proceeding seems to be based entirely on my decisions in his underlying criminal action. (*See id.*) As "judicial rulings alone almost never constitute a valid basis for a bias or partiality motion," *Liteky v. United States*, 510 U.S. 540, 555 (1994), this request is denied.

ORDERED that the Clerk's service of the blank § 2255 motion form shall not be construed as this Court's finding that the original petition is or is not timely or that Petitioner's claims are or are not duly exhausted.

/s/ Freda L. Wolfson
FREDA L. WOLFSON
United States District Judge